

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C.

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OFFICE OF THE SECRETARY

In the Matter of

Calling Party Pay Service Option
in the Commercial Mobile Radio
Services

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WT Docket No. 97-207

COMMENTS OF AMERITECH

Ameritech files these Comments on the Petition for Reconsideration¹ filed in this matter by the Public Utilities Commission of Ohio ("PUCO"). PUCO's Petition argues that "to the extent the Ruling portion of the CPP Order purports (sic) that the FCC has exclusive national jurisdiction over CPP, the order should be reconsidered in the context of a further ruling on the NPRM."² This Petition should be rejected out of hand as it has no rational basis in fact or law, but instead represents yet another attempt by PUCO to regulate an area from which Congress has preempted state action.

As a threshold matter, PUCO's representation that it "is clearly not interested in burdening the cellular industry with any unnecessary regulation, as is proven by Ohio's actual track record ..." ³ is simply not supported by the evidence. PUCO, in fact, was one

¹ In the Matter of Calling Party Pays Service Option In the Commercial Mobile Radio Service, WT Docket No. 97-207, Petition for Reconsideration and Clarification and Further Comments, filed August 17, 1999 (hereinafter "Petition").

² Petition, at 2.

³ Petition, at 4.

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of only eight state Commissions⁴ that attempted to assert jurisdiction despite Congress' 1993 preemption of state regulation of "the entry of or the rates charged by any commercial mobile service ..."⁵ by filing Petitions to reregulate rates and market entry for commercial mobile radio services ("CMRS"). PUCO, in fact, tried to claim a right to asset jurisdiction "at some point in the future".⁶ PUCO's earlier Petition was rejected because it "failed to meet its statutory burden...,"⁷ and its subsequent Petition for Reconsideration was likewise denied.⁸

In the instant Petition, PUCO makes three arguments. Because none of the three have any merit, rejection of the Petition should follow.

First, PUCO claims that "the FCC's jurisdictional approach to Calling Party Pays ("CPP") is unclear, at best."⁹ This is simply incorrect. The FCC has clearly and explicitly stated that its analysis is based upon the plain language of Section 332(c)(3) of the Act.¹⁰ It contains a detailed analysis and rejection of other parties' claims (similar to PUCO's contention)¹¹ that CPP is a "billing practice" rather than a CMRS service.¹² In fact, the Order leaves no room for doubt that the statutory basis for the FCC's action is

⁴ Unsuccessful Petitions were also filed by Hawaii, Arizona, California, Connecticut, Louisiana, New York and Wyoming. See Public Notice, DA 94-1043, 10 FCC Rcd 751.

⁵ 47 U.S.C. 332(c)(3).

⁶ Statement of PUCO's Intention to Preserve its Right for Future Rate and Market Entry Regulation of Commercial Mobile Services, filed August 9, 1994, at 6.

⁷ 10 FCC Rcd 7842, ¶ 31.

⁸ 10 FCC Rcd 12427.

⁹ Petition, at 5.

¹⁰ See, e.g., Order, ¶¶ 8-19 (and fn. 11).

¹¹ Petition, at 8.

¹² Order, ¶¶ 15-17.

Section 332(c) of the Act, which expressly preempts state regulation of CMRS rates and entry. PUCO's attempt to stir up ambiguity where none exists must be rejected.

Second, PUCO's Petition asserts without support that CPP is "not a CMRS service." Rather than taking on the Order's reasoning in this regard (which would be immediately fatal to the Petition's arguments), PUCO flatly states that "CPP is not a new CMRS service but is plainly a billing option ...,"¹³ and claims that "(t)he calling party is still legally the customer of the originating carrier."¹⁴ This is nonsense. A wireline caller who desires to call a CPP customer must agree to pay the CMRS provider for the airtime.¹⁵ Thus, it cannot rationally be disputed that, as the Order notes, "(i)n agreeing to pay for the call to the CMRS subscriber, the calling party becomes, for the purpose of completing the call, a customer of the CMRS provider."¹⁶

Lastly, the Petition advances a makeweight argument that, even assuming CPP is a CMRS service, CPP does not amount to a rate issue -- which the federal statute undeniably bars PUCO from regulating. Relying on the "Arizona Decision,"¹⁷ which was carefully considered and explicitly rejected as noncontrolling by the FCC in its Order,¹⁸ PUCO characterizes CPP as a "consumer safeguard"¹⁹. This contention is absurd. CPP

¹³ Petition, at 6.

¹⁴ Ibid.

¹⁵ Even PUCO concedes that "(b)eing connected to receive a call from the public switched network is beyond the control of a CMRS provider or a CMRS customer who has opted for CPP – it depends entirely on the caller." Petition, at 9 (emphasis added).

¹⁶ Order, ¶ 17.

¹⁷ 10 FCC Rcd 7824 (1995).

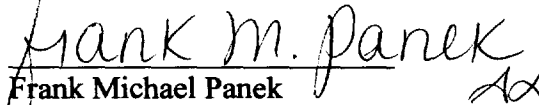
¹⁸ Order, ¶¶ 18-19.

¹⁹ Petition, at 13.

does in fact change the rate structure of CMRS services, by eliminating the airtime charges which would otherwise be assessed against the called party, and assessing them instead against the calling party. If moving a charge from one CMRS customer to another does not constitute a rate change, nothing does.

For the foregoing reasons, PUCO's Petition should be rejected out of hand.

Respectfully submitted,

A handwritten signature in cursive script that reads "Frank M. Panek". The signature is written in dark ink and is positioned above the printed name.

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